

(1981) 04 GAU CK 0017

In the Gauhati High Court

Case No : Criminal Appeal No. 79 of 1977 analogous to Criminal Appeal No. 86 (J) of 1977

Kumar Sunilal Deb

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 23-04-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 334, 335
Evidence Act, 1872 — Section 101, 105, 106, 4
Penal Code, 1860 (IPC) — Section 299, 302, 6, 84

Citation : (1981) 1 GLR 120

Hon'ble Judges : D. Pathak, Acting C.J.; T.C. Das, J

Bench : Division Bench

Advocate : A.K. Bhattacharya and A.K. Das, in No. 79/77 and D.P. Bora, in No. 86J/77, for the Appellant; S.S. Rahman, Public Prosecutor, for the Respondent

Judgement

D. Pathak, Actg. C.J.

1. These two appeals arise out of the same subject matter. Kumar Sunilal Deb (Appellant) was tried u/s 302 I.P.C. for causing the death of his wife and the trial Court convicted him under the said section and sentenced to suffer rigorous imprisonment for life.

2. A brief narration of the fact leading to the present appeal is that on 5.5.73 the Appellant caused the death of his wife inside his house while both of them were sitting by closing the door and the informant P.W. 2, Jagadish Ch. Roy, the nephew of the Appellant after getting some information from the neighboring people went to the place of his maternal uncle and found that his maternal aunt was killed inside the house by his maternal uncle. Thereafter the next day i.e. on 6.5.73 he (P.W. 2) lodged an ejahar at the Abhoyapuri Police Section. On receipt of the First Information Report, police started investigation and during the course of the investigation the Appellant was arrested in his own house on being held by the public on the date of occurrence itself. The dead body of deceased

Binapani was sent for post-mortem examination and P.W. 1, Dr. B.B. Shome held the post-mortem on the dead body of Binapani. After completion of the investigation the Appellant was charged u/s 302 I.P.C. The learned trial Court also framed the charge u/s 302 I.P.C. against the Appellant, The charge was explained and the Appellant denied any complicity in the offence.

3. During trial six witnesses including two doctors and the investigating officer (P.W. 6) were examined and on completion of the trial, the trial court on the basis of the evidence on record convicted and sentenced the Appellant as aforesaid.

4. There is no dispute regarding the death of the deceased Binapani, which has been justified by the evidence of the prosecution witnesses; and also it has been found from the evidence of P.W. 1, the doctor who held the post-mortem examination.

5. The only question for our determination is whether the Appellant is guilty of the offence for which he is charged,

6. Mr. A.K. Bhattacharyya, the learned Counsel appearing for the Appellant assisted by Mr. B.P. Bora, the learned Counsel appearing as, Amicus Curiae in the appeal filed from Jail by the same Appellant, has submitted that on careful consideration scrutiny and scanning of the evidence of the prosecution witnesses one thing that emerges against the Appellant is a very strong suspicion. There is no eye witness to the occurrence. Even at the time of arrest, he was not found to have any blood mark on his person and he was not armed with any weapon, as it has been testified by the deposition of P.W. 6, Pobin Chandra Gogoi, the investigating officer. His evidence is categorical that he did not find any blood mark on the person of the Appellant or his clothes at the time of arrest.

7. Be that as it may, but the main plank of challenge to the appellate judgment and order by Mr. A.K. Bhattacharyya is that the Appellant was insane before, during and after the occurrence. Therefore, the learned Counsel submits that this is a clear case where the provision of Section 84. I.P.C is attracted. In this regard the learned Counsel has drawn our attention to the First information Report submitted by P.W. 2. he may set out in extenso the relevant portion of the First Information Report itself.

Be it stated that my maternal uncle was from some years back suffering from mental disease.

Then the learned Counsel has drawn our attention to the evidence of P.W.'s 3, 4 and 5, who have categorically stated that the Appellant was insane even at the time of occurrence.

P.W. 3, Karuna Barua has stated that Sunilal, the present Appellant was insane since 2/3 years before the occurrence. He has further stated that even before the occurrence he was sent to Tezpur. He proceeds further saying that "at the time of occurrence he was in a fit of insanity." He has also stated that "whenever he gets

such a fit of insanity he chases man with the dao, breaks house. He gets cure and then again he turns mad"

P.W. 4, Bishnuram Roy, has stated in his evidence that the Appellant was suffering from mental disorder. He has stated that the first wife of the accused had to go away to her father's house because of the insanity of the Appellant. His further evidence is that now and then the Appellant suffers from insanity and the significant statement of this witness in the cross-examination is-"he went mad at the time of occurrence also"

P.W. 5, Rohini kumar Roy has stated corroborating the other two witnesses, namely, P.W.'s. 3 and 4 that the Appellant was insane even before the occurrence and according to the witness, to some extent he was insane at the time of occurrence.

The learned Counsel has brought to our notice also that order dated 1.6.74 passed by the Sub-Divisional Judicial Magistrate, Goalpara, Dhubri while the Appellant was produced before him from jail hospital. The order records:

Seen the report saying that the accused is suffering from mental disorder, Accused in the dock gives the appearance of that.

Let the jail authority make necessary arrangement for the treatment of the accused persons.

The court witness No. 1, Dr. Rabindra chakraborty was examined by the trial court on 24.9.75. His evidence shows that on 23.8.75 he examined the Appellant in Dhubri Jail and found him to be not fit for trial, The witness has stated that he had suggested that the Appellant should be transferred to Tezpur Mental Hospital for treatment. The witness has further deposed that even at the time of his deposition the Appellant was suffering from mental disease. On going through the evidence of P.W. 2, Jagadish Chandra Roy, the nephew of the Appellant, we find that the Appellant was suffering from mental disease from before. It is also found from his evidence in cross-examination that at the time of occurrence he was in a fit of insanity. From his evidence it also transpires that now and then he had to be taken to the Mental Hospital at Tezpur. In view of the aforesaid overwhelming evidence even coming from the prosecution witnesses, it was doubtful as to whether the Appellant had the requisite mens rea at the time of alleged causing of death of Binapani. Because, Section 299 of the Indian Penal Code requires that there must be premeditation and the requisite intention which is termed as mens rea, at the time of causing the death of a person. The learned counsel for the Appellant submits that this element was lacking even if the alleged occurrence was there in the death of Binapani. The learned counsel, as we have already alluded, submits in this case that the Appellant's case comes within Section 84 I.P.C. which is one of the provisions coding in chapter IV of the General exceptions of the Indian Penal code. "It is true that Section 84 casts the burden on the accused to adduce evidence and to prove that at the time of occurrence his mental condition was such that he did not know what he was

doing. But the learned Counsel submits that this burden can be only on the preponderance of probability. The Appellant can take advantage of this plea not only from his own evidence but also if available from the evidence of the prosecution witnesses. In this regards the learned Counsel has relied on a decision of the Supreme Court in Dahyabhai Chhaganbhai Thakker Vs. State of Gujarat, where their Lordships had to consider the scope, content and ambit of Section 84 of the IPC After making a reference to the provision of Sections 299 and 84 of the I.P.C. and also Sections 101 and 106 of the Indian Evidence Act, have summarized the principles of law in the following succinct and felicitous language:

It is the fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in Section 299 of the Indian Penal Code. This general burden never shifts and it always rests on the prosecution. But Section 84 of the Indian Penal Code provides that nothing is an offence if the accused at the time of doing that act, by reason of unsoundness of mind was incapable of knowing the nature of this act or what he was doing was either wrong or contrary to law. This being an exception, u/s 105 of the Evidence Act the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused, and the court shall presume the absence of such circumstances, u/s 105 of the Evidence Act, read with the definition of "shall presume" in Section 4 thereof, the court shall regard the absence of such circumstances as proved unless, after considering the matters before it, it believes that the said circumstances existed or their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they did exist. To put it in other words, the accused will have to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the existence of the said circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a "prudent man." if the material placed before the court, such as, oral and documentary evidence, presumptions, admissions or even the prosecution evidences, satisfies the test of "prudent man" the accused will have discharged his burden. The evidence so placed may not be sufficient to discharge the burden u/s 105 of the Evidence Act, but it may raise a reasonable doubt in the mind of a judge as regards one or other of the necessary ingredients of the offence itself. It may, for instance, raise a reasonable doubt in the mind of the judge whether the accused had the requisite intention laid down in Section 299 of the Indian Penal Code. If the judge has such reasonable doubt, he has to acquit the accused, for in that event the prosecution will have failed to prove conclusively the guilt of the accused. There is no conflict between the general burden which is always on the prosecution and which never shifts, and the special burden that rests on the accused to make out

his defence of insanity.

[Emphasis supplied].

It has been further ruled by their Lordships that the doctrine of the burden of proof in the context of the plea of insanity may be stated in the following proposition:

The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions:

(1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea; and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section 84 of the Indian Penal Code; the accused may rebut it by placing before the court all the relevant evidence—oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings. (3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.

The learned Counsel also relies on a Division Bench decision of this Court in Criminal Appeal No. 104 (J) of 1978 (*Abdul Latif v. The State of Assam*) decided on 9.4.81 and has drawn our attention to the following passage of the aforesaid judgment:

Section 6 is an extraordinary provision which obligates the Court to consider whether a case is covered by an exception or not. Section 6, I.P.C. Carves out or stands in the nature of a proviso to Section 106 of the Indian Evidence Act and imposes an obligation on the court as well to consider the case of exceptions on its own in so far as it relates to burden of proving legal insanity as the essential element of "Special Knowledge" envisaged in Section 106, of the Evidence Act is always impaired due to mental derangement.

The aforesaid principle noted above, clearly cast a duty on the Court itself to find out from the materials on record, namely, the evidence of the prosecution witnesses, the conduct of the accused as to whether any doubt arises in the mind of the Court that at the time of occurrence he was mentally not in a fit condition to have the requisite mens rea for the commission of the offence and that he did not have the element of mens rea required u/s 299 I.P.C. On consideration of the evidence on record and for the reasons stated above, we have got no hesitation to come to conclusion that it was doubtful as to whether the Appellant was in a

fit condition or the Appellant had the fit mental condition for the purpose of commission of the offence. The evidence discussed above discloses that in all probability he did not have the proper balance of mind at the time of occurrence.

8. For the foregoing reasons we hold that the Appellant at the crucial point of time of the occurrence was not in a fit condition of his mental health and was incapable Of knowing the nature of the act or that he was doing what was either wrong or contrary to law. Accordingly we are of firm opinion that the conviction and sentence passed against the Appellant are not sustainable in law. Accordingly they are set aside, However, as in our conclusion we have accepted the plea of insanity both the appeals are to be allowed. But due to the provisions under Sections 334 and 335 of the Code of Criminal Procedure the Court is not in a position to direct the release of the accused forthwith. The accused shall be detained in safe custody in the jail until the concerned Civil Surgeon certifies that he is fit enough to live in the society and is no longer a security hazard to the society. The Jail authority shall comply with the provision of the Indian Lunacy Act, 1912 and the rules framed there under. However the Appellant may be handed over to his relative or friend if such an application is made by any such relative or friend but he shall be so released only on his giving security to the satisfaction of sub-divisional Judicial Magistrate, Goalpara. The State shall take necessary steps to inform the relative forthwith.